

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BERNARD ROSS HANSEN and
DIANE RENEE ERDMANN,

Defendants.

Case No.: CR18-092RAJ

JOINT DEFENSE MEMORANDUM RE:
STATUS HEARING

This complex case is scheduled for a Status Hearing on Friday, September 21, 2018. Per the Court's request, the following identifies the three main issues the defense hopes to address with the Court:

1. The Trial Date

Per the original motion to move the trial date, the date agreed upon by the parties was based on the Government's representation of the volume of discovery and its estimate of the time necessary for the defense to effectively prepare for trial. Dkt. 25. The Government has advised the defense that it continues to believe the February trial date is realistic. The defense disagrees.

JOINT DEFENSE MEMORANDUM
RE: STATUS HEARING
(*Hansen and Erdmann*, CR18-092RAJ) - 2

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1 First, the discovery process is not complete. Second, the volume of discovery is
2 extraordinary. In June, the defense noted that discovery at that time including many audio
3 recordings and over 70,000 numbered pages, over 60,000 of which are protected and cannot be
4 produced to the client outside the office. Dkt. 35 n. 16. Since then, the Government has
5 produced approximately 111,000 additional numbered pages of discovery and 2,645 audio files,
6 taken control of over approximately 1,420 boxes from the Nevada warehouse that was subject of
7 earlier litigation, and hopes to produce in the near future mirror images of servers for the Mint
8 that should reflect the Trustee's liquidation of the Mint since he assumed control in April 2016.
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11 Moreover, the Government's index gives the impression that, despite the volume, the
12 discovery is straight forward and easily reviewed. In truth, the discovery production is a rabbit
13 warren.

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15 The February trial date was picked at random, as a placeholder of sorts based on the
16 Government's guestimate of the time it would take the Government to produce discovery and for
17 defense counsel to review the materials, resolve discovery issues and conduct its own
18 investigation in preparation for trial, before the need to file any pretrial motions. Despite the
19 exercise of due diligence, the Government's guestimate proved overly optimistic.

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21 The defense therefore, believe the February date is unrealistic, keeping in mind the above
22 facts and the need for adequate time for counsel to fully and adequately review the discovery
23 with their respective clients, as well as any and all factual and legal issues presented, and
24 sentencing consequences so they can effectively prepare for trial and Ms. Erdmann and Mr.
25 Hansen can each make an informed and intelligent decision of how to proceed. Counsel for Ms.
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1 Erdmann is also expected to be in trial on February 19, 2019 in *United States v. Taylor*, CR 16-
2 300RSL and that trial is expected to take approximately 10 days.

3
4 Since discovery is still ongoing and the defense is yet to receive a vast amount of
5 electronic data, it may make sense to set a date by which the defense can propose a new trial date
6 rather than guessing at new trial date at the Status Hearing.

7 **2. Scheduling Order**

8 The parties agree that in a complex case, scheduling orders regarding deadlines for
9 discovery, including *Jencks*, expert witnesses and other critical components to effective
10 preparation for trial and a fair trial, are appropriate. Based on the Court's decision as to the trial
11 date, the parties agree to work collaboratively on a scheduling order for the Court's consideration
12 after the Status Hearing.
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14 **3. Motions Pending**

15 The defense filed a motion to prevent spoliation of evidence. Dkt. 30. The parties hope to
16 file (if they haven't already) a stipulation regarding the resolution of that motion. The defense
17 does not anticipate the need for further argument.
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19 The defense has also filed a motion for a narrowly defined gag order. Dkt. 39. The
20 proposed order does not and should not preclude the Government or the defense from preparing
21 its case, including but not limited to, interviewing or preparing witnesses in anticipation of trial.
22 If the Government has had sufficient time to review the motion, the parties will be prepared to
23 address the motion at the status hearing. However, if the Government or the Court wishes to set
24 another hearing to address the issue, the defense has no objection to doing so.
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1 **4. Privilege Review.**

2 The parties anticipate that the Court will be asked to review legal documents to determine
3 if they should be withheld from the Government pursuant to the attorney-client privilege. The
4 parties simply wish to let the Court know that such a motion is likely.

5 The Karr Tuttle Campbell Box. The law firm of Karr Tuttle Campbell turned their legal
6 files over to the bankruptcy trustee who, in turn, turned the files over to the Government. The
7 Government reviewed the retention letter and believes that the documents are not subject to a
8 privilege which can be asserted by the defendants. The Government believes that the firm was
9 performing services on behalf of the company, not Mr. Hansen as an individual. However, the
10 Government has not reviewed the file and is holding it for the defense to review to determine
11 whether a privilege will be asserted. The parties are in the process of scheduling a time for the
12 defense to review the materials. If the defense asserts that the file is privileged, the parties will
13 likely ask the Court to review the file to determine whether either defendant can assert the
14 attorney-client privilege regarding the documents.

15 Other documents. As part of its investigation before the case was charged, the
16 Government came into possession of a number of documents for which a taint review process
17 was initiated. That process is not yet complete. There may be issues brought before the Court
18 regarding this process. The defense only learned of the taint review process this month and has
19 not yet seen the reviewed documents.

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21 //

1 The defense is not aware of the any other issues that require the Court's intervention or
2 oversight at this time.

3 Respectfully submitted this 18th day of September, 2018.

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5 s/ Jennifer E. Wellman and Dennis P. Carroll

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Certificate of Service

I hereby certify that on September 18, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such filing to counsel for other parties of record.

/s Charlotte Ponikvar
Paralegal